Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte GUILLAUME VAN DUN

Appeal No. 2002-1207
Reissue Application No. 09/103,321

ON BRIEF

Before KIMLIN, KRATZ, and DELMENDO, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3-6, and 8-27, all the claims remaining in the present application. Claim 1 is illustrative:

1. An apparatus for adjustment of a lip opening of an extrusion die, comprising

at least two lip elements each having a longitudinal axis, said two lip elements defining a lip opening therebetween, a plurality of control units positioned at an angle to said longitudinal axes of said lip elements, a heat expanding arrangement for decreasing [increasing] a thickness of said lip opening by means of thermal expansion of said control units connected to one of said lip elements, a contracting arrangement for increasing [decreasing of] the thickness of said lip opening by means of cooling

medium transversely to said plurality of control units.

The present application is a reissue of appellant's original patent U.S. 4,726,752. Appellant filed this reissue in order to correct obvious errors in the patent claims. In particular, the appealed claims now recite that the heat expanding arrangement decreases, rather than increases, the thickness of the lip opening of the extrusion die, whereas the cooling blocks are used to increase, rather than decrease, the thickness of the lip opening.

There is no dispute that the reissue claims on appeal properly correct the errors in the patent claims.

Appealed claims 1, 3-6, and 8-27 stand rejected under 35 U.S.C. § 251 "as being broadened in a reissue application filed outside the two year statutory period" (page 3 of answer, penultimate paragraph).

We have carefully reviewed the respective positions advanced by appellant and the examiner. In so doing, we concur with appellant that the examiner's rejection is not well-founded. Accordingly, we will not sustain the examiner's rejection for essentially those reasons expressed in appellant's principal and reply briefs on appeal.

The examiner's answer is somewhat confusing inasmuch as the examiner states that "it appears that Applicant's correction of the clear ambiguity should not be construed as broadening" (page 4 of answer, last paragraph, emphasis added). The examiner further explains, however, that "[e]ven though the specification may suggest that the patented claims were not intended or disclosed by Applicant, the patented claims recite a structure which would be mechanically operable (albeit cumbersome)"

(page 5 of answer, first paragraph). Based on this rationale, the examiner concludes that "the instant claims are broader in scope than the original claims because they contain within their scope a conceivable process which would not have infringed the original patent" (id.). The examiner further explains at page 6 of the answer that "it is maintained that the instant claims are broader than the original patented claims because reversing the operation of the contracting and expanding arrangements presents a conceivable process, in at least one respect, which would not have infringed upon the original patent" (second paragraph).

We concur with the statement made by the examiner at page 4 of the answer that "the patented claims, containing a clear ambiguity, must be interpreted in light of the original disclosure and/or specification" (page 4, last paragraph), i.e., in any infringement action the patented claims would be interpreted in light of the specification to define the apparatus intended by appellant and presently claimed. Hence, although the patented claims may be construed to also define the more complicated apparatus referred to by the examiner, the claims would also embrace the apparatus defined in the claims of the reissue application on appeal. Hence, the instant claims would infringe the patented claims and, accordingly, are not broader in scope than the patented claims in any respect.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

Edward C. Kimlin Administrative Patent Judge	)
Peter F. Kratz Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND
Romulo H. Delmendo Administrative Patent Judge	) INTERFERENCES

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